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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
) RM 8535

To: The Commission

**REPLY COMMENTS OF AIRTOUCH PAGING, CAL-AUTOFONE AND
RADIO ELECTRONIC PRODUCTS CORP. ON FURTHER
NOTICE OF PROPOSED RULE MAKING**

AirTouch Paging and its affiliates^{1/} ("AirTouch"), Cal-Autofone, and Radio Electronic Products Corp. ("REPCO") (collectively referred to as the "Companies"), by their attorneys and pursuant to Sections 1.415, 1.419 and 1.421 of the Commission's Rules,^{2/} hereby submit their reply comments in connection with the Further Notice of Proposed Rule Making^{3/} ("FNPRM") released July 2, 1996 respecting the appropriate allocation and recovery of costs associated with the deployment of local number portability ("LNP"). The following is respectfully shown:

I. INTRODUCTION

1. In response to the FNPRM, the Companies filed Comments suggesting that shared costs and carrier-specific

^{1/} The licensed affiliates of AirTouch Paging are: AirTouch Paging of Virginia, Inc., AirTouch Paging of Kentucky, Inc., AirTouch Paging of Texas, Inc., AirTouch Paging of California, Inc., and AirTouch Paging of Ohio.

^{2/} 47 C.F.R. §§ 1.415, 1.419, and 1.421.

^{3/} FCC 96-286.

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costs directly related to implementation of LNP should be allocated among carriers that benefit from the provision of number portability, and that carrier-specific costs not directly related to LNP should be borne by the individual carriers. There exists strong support for the positions advocated by the Companies in other comments filed in this proceeding.

II. DISCUSSION

A. Virtually All Commenters Support Requiring Carriers to Bear Their Own Carrier-Specific Costs Not Directly Related to LNP

2. The Companies supported the Commission's tentative conclusion that carriers should bear their own costs not directly related to deployment of LNP, and should treat those costs as other network upgrades are treated.^{4/} These are costs which would have been incurred even absent the requirement of number portability. Routine or otherwise planned upgrades should not be subsidized under the auspices of the portability program.

3. This position was supported by virtually all commenters in this proceeding, regardless of size, financial position, or service provided. Local exchange carriers

^{4/} See Comments of AirTouch Paging, Cal-Autofone and REPCO at 2.

("LECs"),^{5/} competitive local exchange carriers ("CLECs"),^{6/} interexchange carriers ("IXCs"),^{7/} commercial mobile radio service ("CMRS") providers,^{8/} and state regulatory commissions^{9/} alike advocate carrier-specific responsibility for costs not directly related to LNP. This broad-ranging consensus in support of the FCC's tentative conclusion that costs not directly related to LNP should be borne by the individual carrier, warrants affirmation of this approach.

^{5/} See e.g., Comments of SBC at 9, Association for Local Communications Services at 2, Bell Atlantic at 2, Pacific Telesis at 11-12, NYNEX at 3, and Frontier Corporation at 3.

^{6/} See e.g., Comments of Teleport Communications Group, Inc. at 9-10.

^{7/} See, e.g., Comments of Sprint at 9-11, MCI at 10-12, and AT&T at 17-18.

^{8/} See, e.g., Comments of Nextel Communications Inc. at 2, Scherers Communications Group, Inc. at 2, Winstar Communications, Inc. at 6-8, Personal Communications Industry Association at 8, and Omnipoint at 4-6.

^{9/} See, e.g., Comments of California Public Utilities Commission at 4, Colorado Public Utilities Commission and Colorado Office of Consumer Counsel at 10-11, Florida Public Services Commission at 5-6, and Missouri Public Services Commission at 5.

**B. There is Substantial Support in the Record for
Requiring Carriers to Bear Their Own
Carrier-Specific Costs Directly Related to LNP**

4. The Companies advocated that carrier-specific costs related to LNP should be borne by the individual carrier.^{10/} Many other commenters agree that carriers should bear their own carrier-specific costs related to portability. In fact, commenters which support this proposal again include LECs,^{11/} CLECs,^{12/} IXCs,^{13/} CMRS providers,^{14/} and state regulatory commissions.^{15/} Thus, a strong consensus exists in support of requiring carriers to bear their carrier-specific costs. This provides ample

^{10/} See Comments of AirTouch Paging, Cal-Autofone and REPCO at 3-5.

^{11/} See, e.g., Comments of Pacific Telesis at 8-11, ITCs, Inc. (consulting firm to local exchange providers) at 3-4, and Frontier Corporation at 2-3.

^{12/} See, e.g., Comments of Teleport Communications Group, Inc. at 7-9, MFS Communications Company, Inc. at 2-4, and Telecommunications Resellers Association at 11-12.

^{13/} See, e.g., Comments of Sprint at 8-9, MCI at 9-10, and AT&T at 12-17.

^{14/} See, e.g., Comments of Nextel at 2-3 (only those subject to portability should bear costs), Scherers Communications Group, Inc. at 1-2, Winstar Communications, Inc. at 6-8, Personal Communications Industry Association at 7-8, and Omnipoint at 4-6.

^{15/} See, e.g., Comments of Missouri Public Services Commission at 4-5.

support in the record for the Commission to adopt this proposal.

5. The costs incurred are directly related to the benefit these carriers receive from their participation in the number portability program -- the ability to compete for customers now serviced by others with a guaranty that they will retain their telephone number. Paging providers -- which are not subject to the Commission's portability requirements, nor participants in the portability program -- receive no benefit from portability. Customers of paging carriers also do not receive a benefit from portability since the FCC's rules do not entitle them to retain their number if they change paging carriers. In addition, allowing carriers to pass on costs of specific network upgrades to other carriers would be a disincentive to reduce costs of services and increase efficiency of the network.

**C. Many Commenters Also Support the Position
that Shared Costs of LNP Should be Allocated
Only Among Carriers That Benefit From LNP**

6. Finally, for the same reasons supporting its argument with respect to carrier-specific costs relating to LNP, the Companies argued that shared industry costs of deploying number portability should be borne by those who benefit from the program.^{16/} As discussed above, paging

^{16/} See Comments of AirTouch Paging, Cal-Autofone and REPCO at 5-6.

companies and their paging customers neither participate in, nor benefit from, number portability. The only carriers and customers that do benefit are those that provide, or subscribe to, local telephone exchange service.

7. Most of the commenters support the Companies' position that these costs should be recovered only from portability beneficiaries. Support for this position came from virtually all comments, including CLECs, ^{17/} IXCs, ^{18/} CMRS providers, ^{19/} and state regulatory commissions. ^{20/}

8. Predictably, only the LECs did not support this position. The LECs advocated allocation of shared industry costs among "all telecommunications carriers." At first blush, this would appear to encompass all telecommunications carriers as that term is defined by the Telecommunications

^{17/} See, e.g., Comments of Teleport Communications Group, Inc. at 4-6, and Telecommunications Resellers Association at 6-11.

^{18/} See, e.g., Comments of Sprint at 5-8, MCI at 3-9, and AT&T at 6-12.

^{19/} See, e.g., Comments of Nextel Communications, Inc. at 3-4, Scherers Communications Group, Inc. at 2-3, Personal Communications Industry Association at 5, and Omnipoint at 2-3 (costs recovered by charges assessed on per query basis).

^{20/} See, e.g., Comments of Colorado Public Utilities Commission and Colorado Office of Consumer Counsel at 6-7, and California Public Utilities Commission at 6 (assumes that the carriers against which charges are assessed will use the database).

Act of 1996, i.e., as including paging companies. However, upon closer examination of the LECs' comments, it appears that excluding paging companies from any cost allocation would be consistent with the LECs' positions.

9. First, it appears that LECs argue that "all telecommunications carriers" should bear the costs of LNP in order to prevent beneficiaries of the portability program from escaping the costs associated with that program. By way of example, a common argument raised by incumbent LECs is that they will be required to incur the bulk of the costs associated with LNP, while the beneficiaries of the program (e.g., new entrants) will incur substantially less costs to implement LNP. The Companies respectfully suggest that the LECs' concerns may be addressed without imposing costs on carriers not participating in the LNP program. Instead, the Commission should clarify that "all telecommunications carriers benefiting from LNP" should bear the costs of LNP.

10. Further, it appears that LECs may not have intended their broad use of the term "telecommunications carriers" and "CMRS providers" to include paging companies. The context in which these terms are used in the comments frequently implies an understanding that such carriers will use LNP databases to route and terminate calls, and that the carriers and their customers will benefit from portability. The comments fail to address the distinction that the

Commission has drawn between telecommunications carriers and even between CMRS providers by explicitly exempting paging carriers from the LNP program. Paging carriers, not subject to the requirements of portability, will not use the databases to route and terminate calls. As noted above, neither the carriers nor their customers will benefit from portability. In light of the apparent inapplicability of the LECs' concerns to paging companies, and the failure of the LECs to address these ambiguities in their comments, it is reasonable to assume that the LECs did not even consider the impact of cost recovery mechanisms on paging companies, knowing that these companies do not participate in the program whatsoever.

11. In light of the industry consensus of all but LECs with respect to the allocation of shared LNP costs, and the LECs' failure to make a direct case supporting allocation of costs to paging companies, the Companies respectfully suggest that the Commission exempt paging companies from any shared cost allocation.

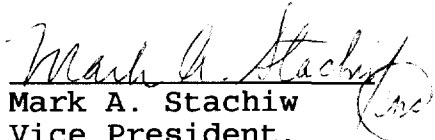
III. CONCLUSION

WHEREFORE, the foregoing premises having been duly considered, the Companies respectfully request that the Commission adopt the proposals set forth in their Comments and Reply Comments filed in this proceeding.

Respectfully submitted,

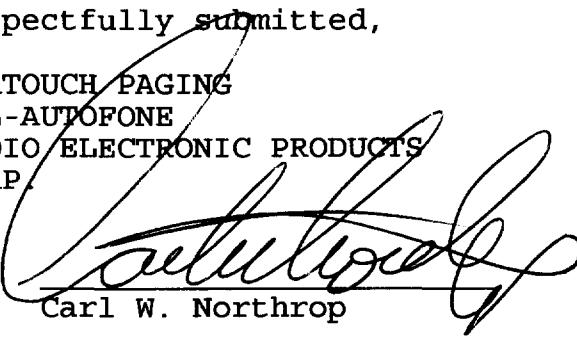
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September 16, 1996

CERTIFICATE OF SERVICE

I, Myra F. Burke, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, hereby certify that a copy of the foregoing Reply Comments of AirTouch Paging, Cal-Autofone and Radio Electronic Products Corp. on Further Notice of Proposed Rule Making was sent by first class, postage prepaid, United States mail on September 16, 1996.

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